



ROBERT T. EGLET, ESQ.

Nevada Bar No. 3402

ROBERT M. ADAMS, ESQ.

Nevada Bar No. 6551

RICHARD K. HY, ESQ.

Nevada Bar No. 12406

EGLET ADAMS

400 South Seventh Street, Suite 400

Las Vegas, Nevada 89101

Telephone: (702) 450-5400

Facsimile: (702) 450-5451

Email: eservice@egletlaw.com

-and-

JONATHAN E. LOWY, ESQ.

(Admitted Pro Hac Vice)

District of Columbia Bar No. 418654

BRADY CENTER TO PREVENT GUN VIOLENCE

840 1st Street, NE, #400

Washington, DC 20002

Telephone: 202-370-8104

Email: jlowy@bradymail.org

Attorneys for Plaintiffs

DISTRICT COURT

CLARK COUNTY, NEVADA

DEVAN PRESCOTT, individually and on
behalf of all those similarly situated; BROOKE
FREEMAN, individually and on behalf of all
those similarly situated,

Plaintiffs,

vs.

SLIDE FIRE SOLUTIONS, LP, a Foreign
Corporation; DOE MANUFACTURERS 1
through 100, inclusive; ROE RETAILERS 1
through 100, inclusive.

Defendants.

Case No.: 2:18-cv-00296-GMN-BNW

PLAINTIFFS' MOTION TO
CONTINUE TIME FOR FILING THE
MOTION FOR CLASS
CERTIFICATION AND EXTEND ALL
DISCOVERY DEADLINES

1 Plaintiffs, by and through their counsel of record, hereby submit the instant Motion to
2 Extend Time for Filing the Motion for Class Certification.

3 **I. INTRODUCTION**

4 In December 2019, the parties to this action agreed to a discovery schedule, which was
5 entered by this Court on January 6, 2020.¹ Under that schedule, the Plaintiffs were to file the
6 Motion for Class Certification by Friday, July 31, 2020.² However, due to various circumstances,
7 the July 31, 2020 deadline for the Motion for Class Certification is not attainable. Accordingly,
8 Plaintiffs request that all deadlines within the Discovery Scheduling Order be continued by 9
9 months, so that the Motion for Class Certification must be filed by April 30, 2021.

10 **II. DISCOVERY HAS BEEN DELAYED**

11 When the Parties agreed to a discovery schedule in December 2019, there was no way they
12 could have foreseen the upcoming pandemic. Discovery opened on January 6, 2020 with the filing
13 of the Discovery Scheduling Order. On February 20, 2020, Plaintiffs served Defendant with the
14 first sets of interrogatories, requests for production, and requests for admission.³ On March 13,
15 2020, before Defendant's time to respond had expired, the President of the United States declared
16 a National State of Emergency due to the COVID19 pandemic. Defendant served its responses to
17 the interrogatories and requests for admission on April 14, 2020 and served the responses to the
18 requests for production on April 28, 2020.⁴ On May 19, 2020, the Defendant served Plaintiffs
19 with the first set of requests for production.⁵ Plaintiffs' responses are due August 21, 2020.

20 No other discovery has taken place. There have not been any depositions. Expert reports
21 have not been disclosed. The Nation continues to be in a state of emergency with no sign of relief.

22 _____
23 ¹ See Document 72.

24 ² *Id.* at p. 3:26-27. Note, there is a clerical error in the schedule, stating "Thursday, July 31, 2020."

25 ³ See Exhibit 1, Plaintiffs' First Set of Interrogatories to Defendant; Exhibit 2, Plaintiffs' First Set
26 of Requests for Admission to Defendant; and Exhibit 3, Plaintiffs' First Requests for Production
27 to Defendant.

28 ⁴ See Exhibits 4, 5, and 6, Defendant's responses to Written Discovery.

⁵ See Exhibit 7, Defendant's First Requests for Production to Plaintiffs.

1 As this Court is aware, the impact of COVID19 can be felt in all areas of litigation. The pandemic
2 has significantly impaired the parties' abilities to schedule or plan for the discovery necessary for
3 the Plaintiffs to move for class certification and for Defendant to oppose such a motion.

4 Additionally, the parties recently began discussing the possibility of mediating this case.
5 Mediating at this stage of litigation, where discovery has only just begun and costs are relatively
6 low, benefits all parties. An extension of all deadlines in the Discovery Scheduling Order,
7 including the deadline for filing the motion for class certification, reduces expenses and would
8 help facilitate mediation discussions.

9 Moreover, Defendants' Motion for Reconsideration is pending before the Court. That
10 Motion involves potentially case dispositive issues. It is more cost effective and efficient for all
11 parties to delay expensive and time-consuming discovery until they receive a ruling on the issues
12 presented in the Motion for Reconsideration.

13 Discovery has been delayed to such an extent that the December 2020 close of discovery
14 is no longer practicable. The COVID19 pandemic has already lasted much longer than many
15 anticipated. It is unlikely that the pandemic will resolve in time to allow for the parties to complete
16 the discovery according to the current deadlines. Accordingly, all parties would benefit from an
17 extension of all discovery deadlines.

18 **III. A MOTION FOR CLASS CERTIFICATION IS NOT PRACTICABLE WITHOUT**
19 **DISCOVERY**

20 In any class action, it is the plaintiffs' burden to establish that certification is appropriate
21 under FRCP 23. Generally, a class may not be certified based upon allegations in the pleadings
22 alone. In order to succeed on a motion for class certification, the plaintiffs must demonstrate that:

- 23 (1) the class is so numerous that joinder of all members is impracticable; (2) there
24 are questions of law or fact common to the class; (3) the claims or defenses of the
25 representative parties are typical of the claims or defenses of the class; and (4) the
26 representative parties will fairly and adequately protect the interests of the class.

27 FRCP 23(a); *see also Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 345 (2011).

28 Additionally, the plaintiffs are required to satisfy at least one of the three prongs of FRCP
23(b):

- 1 1. There is a risk that the prosecution of individual actions would result in inconsistent
2 rulings “that would establish incompatible standards of conduct for the party opposing
3 the class,” or that the adjudication of one individual’s action would dispose of the
4 interests of other individuals and impede the ability of other individuals to protect their
5 interests;
- 6 2. The defendants are acting in such a way applicable to the entire class so that “final
7 injunctive relief or corresponding declaratory relief is appropriate respecting the class
8 as a whole;” or
- 9 3. “[Q]uestions of law or fact common to class members predominate over any questions
10 affecting only individual members, and that a class action is superior to other available
11 methods for fairly and efficiently adjudicating the controversy.”

12 FRCP 23(b).

13 Plaintiffs must have the opportunity to conduct discovery in order to seek class
14 certification. The Ninth Circuit has recognized that “[t]he propriety of a class action cannot be
15 determined in some cases without discovery, as, for example, where discovery is necessary to
16 determine the existence of a class or set of subclasses.” *Kamm v. California City Development*
17 *Co.*, 509 F.2d 205, 210 (9th Cir. 1976). Additionally, the comments to FRCP 23 recognize the
18 importance of discovery in determining where class certification is appropriate. FRCP 23, Notes
19 of Advisory Committee on 2003 Amendments. For example, in the *Dukes* case, the plaintiffs
20 presented discovery in the form of “statistical evidence about pay and promotion disparities
21 between men and women . . . , anecdotal reports of discrimination from about 120 of Wal-Mart’s
22 female employees, and the testimony of a sociologist,” regarding Wal-Mart’s culture and
23 personnel practices. *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. at 346.

24 As discussed, *supra*, the parties have not had the opportunity to engage in significant,
25 meaningful discovery. Not only does the lack of discovery hinder Plaintiffs’ ability to support a
26 motion for class certification, it also hinders the Defendant’s ability to provide a meaningful
27 response to any such motion. Thus, Plaintiff requests that all dates within the Discovery
28

Scheduling Order be continued for a period of 9 months, including the deadline for the motion for class certification.

IV. CONCLUSION

Based on the foregoing, Plaintiffs respectfully request that all deadlines within the Discovery Scheduling Order be continued by a period of 9 months, thus rendering the Motion for Class Certification due on, or before, April 30, 2021.

DATED this 31st day of July, 2020.

/s/ Robert M. Adams

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The Court notes that defendant does not intend to oppose this motion. See ECF No. 81 at 3. Further, the Court finds that there exists good cause for the requested extension. Therefore, IT IS ORDERED that plaintiffs' motion is GRANTED. The deadlines in the DPSO shall be continued by a period of 9 months, which means that the deadline for the motion for class certification is now April 30, 2021.

IT IS SO ORDERED

DATED: 5:31 pm, August 06, 2020



BRENDA WEKSLER
UNITED STATES MAGISTRATE JUDGE